

**From:** Daniel Kelly  
**Sent:** Tuesday, February 14, 2012 12:12 PM  
**To:** 'Poland, Douglas'; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; TShriner@foley.com; 'Kasper, Kellen C.'; 'Peter Earle'; jackie@jboynton.com; 'Scott Hassett'; 'James Olson'; pshassett@yahoo.com; 'Daniel Lenz'  
**Cc:** Brown, Dustin; Arends, Wendy  
**Subject:** RE: Census issues

Doug,

The court's scheduling order says this trial is just about the constitutionality of Acts 43 and 44. It specifically states that it is not about remedies.

Further, the "anomalies" have nothing to do with creation of the maps, and so no remedy to the "anomalies" would implicate the maps, only their implementation. I've spoken with Patrick, and he does not recall any other reason you gave for having Kevin testify.

Dan.

**Daniel Kelly**

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**From:** Poland, Douglas [mailto:DPoland@gklaw.com]  
**Sent:** Tuesday, February 14, 2012 11:58 AM  
**To:** Daniel Kelly; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; TShriner@foley.com; 'Kasper, Kellen C.'; 'Peter Earle'; jackie@jboynton.com; 'Scott Hassett'; 'James Olson'; pshassett@yahoo.com; 'Daniel Lenz'  
**Cc:** Brown, Dustin; Arends, Wendy  
**Subject:** RE: Census issues

We have, Dan. I spoke with Patrick about some of them over the weekend, and the topic is relevant to remedies should the Court remand the maps to the legislature.

Douglas M. Poland  
Attorney

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**From:** Daniel Kelly [<mailto:dkelly@reinhartlaw.com>]

**Sent:** Tuesday, February 14, 2012 11:27 AM

**To:** Poland, Douglas; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'

**Cc:** Brown, Dustin; Arends, Wendy

**Subject:** RE: Census issues

Care to share any of those reasons? We will object to any discussion of the "anomalies" unless you can provide some way in which it is relevant.

Dan.

**Daniel Kelly**

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**From:** Poland, Douglas [<mailto:DPoland@gklaw.com>]

**Sent:** Tuesday, February 14, 2012 11:24 AM

**To:** Daniel Kelly; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'

**Cc:** Brown, Dustin; Arends, Wendy

**Subject:** RE: Census issues

There are a host of reasons that the testimony of Kevin Kennedy, a party to the lawsuit, is indispensable to the issues before the Court. We appreciate your willingness to accept a trial subpoena and will send it to you promptly.

Douglas M. Poland  
Attorney

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**From:** Daniel Kelly [<mailto:dkelly@reinhartlaw.com>]

**Sent:** Tuesday, February 14, 2012 11:08 AM

**To:** Poland, Douglas; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'

**Cc:** Brown, Dustin; Arends, Wendy

**Subject:** RE: Census issues

We will accept the subpoena. But party or not, his testimony has to be relevant. If he has nothing to say that bears on the constitutionality of the Acts, then of course we will ask the court to prevent you from questioning him about irrelevancies. Which is what the "anomalies" are.

There are really only three possibilities here (unless I am missing something): (1) You might be trying to backdoor the "anomalies" issue without amending your complaint; (2) you are trying to make the Legislature look bad in how it adopted the legislation, which is obviously not relevant; or (3) you are maligning the GAB with respect to how it does its job, also not relevant.

Were there other reasons you might need his testimony?

Dan.

**Daniel Kelly**

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**From:** Poland, Douglas [<mailto:DPoland@gklaw.com>]

**Sent:** Tuesday, February 14, 2012 10:55 AM

**To:** Daniel Kelly; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'

**Cc:** Brown, Dustin; Arends, Wendy

**Subject:** RE: Census issues

Just to understand, you are going to move to exclude all testimony of your own client, a party to this lawsuit, and prevent him from testifying to the Court? Does this mean that you also will not accept a trial subpoena for him, and we will need to serve him by process server? If so, please let me know immediately so that we can serve the trial subpoena.

Douglas M. Poland  
Attorney

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**From:** Daniel Kelly [<mailto:dkelly@reinhardtlaw.com>]  
**Sent:** Tuesday, February 14, 2012 10:51 AM  
**To:** Poland, Douglas; Patrick J. Hodan; 'Lazar, Maria S.'; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'  
**Cc:** Brown, Dustin; Arends, Wendy  
**Subject:** RE: Census issues

Doug,

The only question before the court is whether Acts 43 and 44 are constitutional. As you admit in your email, you do not intend to introduce the "anomalies" as a challenge to the constitutionality of the Acts, so they are – by definition – not relevant to the case. We will move the court to exclude his testimony.

Dan,

**Daniel Kelly**  
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**From:** Poland, Douglas [<mailto:DPoland@gklaw.com>]  
**Sent:** Tuesday, February 14, 2012 10:46 AM  
**To:** Patrick J. Hodan; 'Lazar, Maria S.'; Daniel Kelly; Colleen E. Fielkow; [TShriner@foley.com](mailto:TShriner@foley.com); 'Kasper, Kellen C.'; 'Peter Earle'; [jackie@jboynton.com](mailto:jackie@jboynton.com); 'Scott Hassett'; 'James Olson'; [pshassett@yahoo.com](mailto:pshassett@yahoo.com); 'Daniel Lenz'  
**Cc:** Brown, Dustin; Arends, Wendy  
**Subject:** RE: Census issues

Patrick,

We do not intend to challenge the accuracy of the census data itself. As I said in our call yesterday, although we do not intend to argue that the "anomalies" issue caused legislative or congressional districts to become unconstitutionally unbalanced or caused voters to move districts, I do intend to elicit testimony that the "anomalies" or "discrepancies" were the result of a rushed process, and that it has caused confusion and uncertainty for municipal clerks and voters. After the attention given this issue, both in the news media and in pleadings, the Court needs to understand the facts produced by discovery. Kevin is both the appropriate and ideal witness to provide that brief explanation.

Douglas M. Poland  
Attorney

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**From:** Patrick J. Hodan [<mailto:phodan@reinhartlaw.com>]

**Sent:** Monday, February 13, 2012 11:17 PM

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**Cc:** Brown, Dustin; Arends, Wendy; Patrick J. Hodan

**Subject:** Census issues

Dear Counsel:

I am writing to confirm that the plaintiffs (Baldus and Voces) and the intervenor-plaintiffs do not intend to challenge the census data or otherwise offer or elicit testimony or evidence regarding the census "anomalies" issue at trial. In reliance on this agreement, defendants are not filing a motion in limine on that issue or retaining an expert to rebut such evidence. If I have not accurately stated our understanding, please advise us immediately.

Patrick

**Patrick J. Hodan**

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**From:** Poland, Douglas [<mailto:DPoland@gklaw.com>]

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**Cc:** Brown, Dustin; Arends, Wendy

**Subject:** RE: Joint Pretrial Report - Next steps